Schools—School Districts—Apportionment—Attendance.

Where the school is closed in one district by action of the board, and pupils attend in another district apportionment of cost must be made as provided in section 1010, R. C. M. 1921.

W. E. MacDonald, Esq., September 28, 1925.
County Attorney,
Fort Benton, Montana.

My dear Mr. MacDonald:

You have submitted for my opinion the question whether school district No. 59 of your county should be reimbursed by school district No. 42 under the latter portion of the provisions of chapter 76, laws of 1925, which amends section 1010, R. C. M. 1921.

The particular facts are as follows:

One of the patrons of school district No. 42 was dissatisfied with the teacher provided for the district by the school board and on his own accord and without any authority of the trustees of his district sent his three children to school district No. 59. Thereafter district No. 42 closed its school. It appears that the reason school district No. 42 was closed was because there were no other pupils of school age remaining in district No. 42 .

I will undertake to review the various enactments that enter into section 1010 as it now appears in chapter 76, laws of 1925.

In 1903 the legislature enacted chapter 68, section 1 of which provided:

> "That the trustees of any school district in the state of Montana may, when they shall deem it for the best interest of all the pupils residing in such district close their school and send the pupils of the district to another district, and for such purpose are hereby empowered to expend any moneys belonging to their district for the purpose of paying for the transportation of the pupils from their district to such other districts and paying their tuition."

It is apparent that this section (which is still a part of this act) was intended only to cover cases where it was more expedient to close the school in one district and transport the pupils to the school in another district. This was the only provision relative to transportation of pupils until chapter 40, laws of 1911, added to the foregoing section the following:

> "Whenever the trustees of any school district in the state of Montana deem it for the best interest of such district and the pupils residing therein they may expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public schools maintained in such district."

The purpose of this added provision is plain. Prior to this enactment school boards had no statutory authority for transporting pupils generally from their homes to the public school maintained in their district, but could only transport them in those cases where they closed a school and sent their pupils to the school in another district.

This section was re-enacted, without change, as a part of section 507 of chapter 76, laws of 1913.

The eighteenth legislative assembly further amended section 1010 by adding to the enactments previously made the following:

> "When they deem it for the best interest of such district and the pupils residing therein, that any of such pupils should be sent to a school in their own or some other district, they may expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupils from their homes to the public school or schools of such district or for their board while actually attending such schools or for rent: provided that the county superintendent of schools and county commissioners shall determine before any contracts are entered upon whether such provision of board, rent, transportation or tuition is justified by the circumstances and also what is a reasonable charge for board, rent, transportation or tuition in every case where such measures have been adopted. If in the judgment of the county superintendent and county commissioneers there is any evidence of fraud in securing an allowance for board, transportation, house rent or tuition by reason of the applicant's having purposely changed his residence or otherwise having contrived to secure assistance, no district funds shall be allowed for any of the purposes above enumerated."

Chapter 76 of the nineteenth legislative assembly further amended chapter 70, laws of 1923, by making provision for the letting of a contract where there are five pupils or more, but did not change the provisions of section 1010, as formerly enacted, so as to take away from the board its discretion in the matter of furnishing transportation. It did, however, add to this section the following provision:

> "When a district is relieved of the necessity of supporting any school by the fact that all or a part of the children residing in the district are being provided with schooling in another district, it shall be the duty of the trustees in the district holding no school to assist in the support of the school which the children of their district are attending, in proportion to the relation of the number of children from their district attending school in another district bears to the total number of children enrolled in the school in the other district. No district shall be entitled to share in the county apportionment if trustees refuse to comply with the above requirement when they are thus relieved of the necessity of providing *any* school."

Our supreme court had under consideration in the case of State ex rel. Robinson vs. Desonia, 215 Pac. 220, the provisions of section 1010 with reference to their being discretionary with the school board. In this case the court said:

> "We think the intention of the legislature was to leave the matter of maintaining and closing schools as well as transporting pupils to the sound discretion of the trustees, selected by the people of the district."

It is apparent that the legislature, in making the changes contained in chapter 76, laws of 1925, did not intend to change the provisions of this section with reference to the discretionary character of its provisions, but only intended to provide a method of computing the amount to which a district would be entitled where another district was relieved of the necessity of providing any school for its pupils.

In the present case it was discretionary with the school board whether it closed the school. However, it did close the school and school district No. 59 provided schooling for all the pupils of school age belonging to school district No. 42. It was thus relieved of the necessity of furnishing any school, as evidenced by the fact that school was closed.

It was discretionary with the patron of school district No. 42 to send his three children to the school in district No. 59, although this school is 3 1-4 miles from his residence and the school in his own district is only one-quarter of a mile from his residence.

It was within the discretion of the trustees of school district No. 42 to close the school and having done so and the children of school age being provided with schooling by district No. 59, it is my opinion that school district No. 42 is indebted to school district No. 59 in proportion to the attendance and in proportion to the time that school was maintained in district No. 42, as compared with school district No. 59, after the enactment of chapter 76, supra.

Very truly yours,

L. A. FOOT,
Attorney General.